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GROUP OF EXPERTS ON MONEY LAUNDERING
REQUEST BY THE FINANCIAL ACTION TASK FORCE
(FATF)

Regarding the Commission's activities related to the control of money laundering, the Executive Secretariat would like to present to the Principal Representatives a request made by the Financial Action Task Force (FATF).

As the Principal Representatives will note, the letter sent by the FATF requests that CICAD's Member States endorse option 2 of Article 4bis of the draft United Nations Convention Against Transnational Organized Crime in the negotiations that will take place in Vienna on October 4 – 15, 1999.

The Secretariat would like to draw attention to the Principal Representatives, of among other differences, option 1 that states:

"In establishing regimes to combat money-laundering, States Parties should consider, in particular, the forty recommendations of the Financial Action Task Force on Money Laundering¹, as well as other relevant initiatives against money-laundering endorsed by the Organization of American States, the European Union, the Council of Europe and the Caribbean Financial Action Task Force."

While option 2 proposes:

"For the purposes of implementing and applying the provisions of this article [4 and 4 bis], States Parties shall adopt and adhere to the international standards set by the Financial Action Task Force on Money Laundering established by the Heads of State or Government of the seven major industrialized countries and the President of the European Commission as set out for reference in annex ... to this Convention and as endorsed by the General Assembly in its resolution S-20/4 of 10 June 1998 on countering money-laundering².

¹ Known as FATF Forty Recommendations

² Regarding this matter, the relevant paragraphs state what follows:

"Recalling Commission on Narcotic Drugs resolution 5 (XXXIX) of 24 April 1996,(21) in which the Commission noted that the forty recommendations of the Financial Action Task Force established by the heads of state or Government of the seven major industrialized countries and the President of the European Commission remained the standard by which the measures against money-laundering adopted by concerned States should be judged, as well as Economic and Social Council resolution 1997/140 of 21 July 1997, in which the Council took note with satisfaction of the document entitled 'Anti-drug strategy in the hemisphere', approved by the Inter-American Drug Abuse Control Commission of the Organization of American States at its twentieth regular session, held at Buenos Aires in October 1996 and signed at Montevideo in December 1996, and urged the international community to take due account of the anti-

With respect to the monitoring of implementation by States Parties of the obligations set forth in this article [4 and 4 bis], and without prejudice to the application of article (23) to other provisions of this Convention, a State Party shall be deemed to be in compliance with article (23) if that State Party is subject to and participates in a regular process of peer review³ conducted by the Financial Action Task Force or other comparable regional body that assesses implementation of regimes against money-laundering as set forth in this article."

In view of the FATF's request, the Executive Secretariat would like to know the comments of the Principal Representatives on the proposed options.

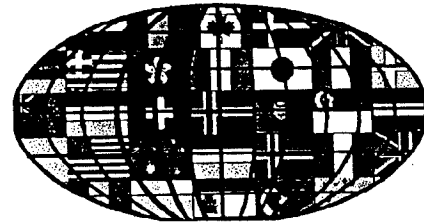
drug strategy in the hemisphere as a significant contribution to the strengthening of the Global Programme of action adopted by the General Assembly at its seventeenth special session,

Recognizing the political will expressed by the international community, especially as reflected in such initiatives as the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, adopted in 1990 by the Committee of Ministers of the Council of Europe, the Ministerial Communique of the Summit of the Americas Conference Concerning the Laundering of proceeds and Instrumentalities of crime, held at Buenos Aires in December 1995, and by such bodies as the Inter-American Drug Abuse Control Commission of the Organization of American States, the Asia Pacific Group on Money Laundering, the Caribbean Financial Action Task Force, the Offshore Group of banking Supervisors and the Commonwealth, all of which are well-recognized multilateral initiatives aimed at combating money laundering and constitute legal or policy frameworks within which concerned States are defining and adopting measures against money-laundering... "

³ Known as "mutual evaluation"

FINANCIAL ACTION TASK FORCE
ON MONEY LAUNDERING

GROUPE D'ACTION FINANCIERE
SUR LE BLANCHIMENT DE CAPITAUX



PRESIDENT

6 September, 1999

Mr. David Beall
Executive Secretary of the CICAD
Organization of American States
1889 F Street, NW
Washington, D.C. 20006
United States

Dear Mr. Beall,

*Re: Draft United Nations Convention Against Transnational Organised Crime
(Article 4bis)*

Following my letter of 28 July 1999, I would like to pursue the issue of the co-operation between the Financial Action Task Force (FATF) and the OAS/CICAD to promote money laundering countermeasures. Through our collaboration, we have advanced anti-money laundering efforts in many jurisdictions. I am now writing to request your assistance in extending anti-money laundering measures even more broadly through the negotiation of the Convention Against Transnational Organised Crime, currently underway at the United Nations.

The draft United Nations Convention contains provisions regarding various aspects of transnational organised crime. Articles 4 and 4bis of the draft Convention incorporate criminal and civil provisions, respectively, to combat money laundering. Following the last round of United Nations negotiations on these two Articles, two alternative texts of Article 4bis (Options 1 and 2, enclosed) have emerged and are under consideration. The FATF strongly supports Option 2 for Article 4bis and encourages the member governments of your organisation that will be participating in the 4-15 October 1999 Convention negotiations in Vienna to support Option 2 as well.

I believe that it is important that the United Nations Convention Against Transnational Organised Crime include provisions requiring each State Party to implement a comprehensive anti-money laundering programme. Money laundering is a serious transnational crime in its own right, with the potential to corrupt the global financial system. The United Nations Convention provides an opportunity for Member States around the world to endorse and extend the reach of the forty Recommendations of the FATF in the fight against money laundering.

The forty Recommendations already constitute a global international standard in measures to counter money laundering. They have been recognised, endorsed, or adopted by many international

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bodies, comprising approximately half of the world's jurisdictions, and by the United Nations General Assembly¹ itself, thereby establishing the forty Recommendations as a truly global standard. Should the United Nations Convention establish a different set of countermeasures, it would undermine the standards of the forty Recommendations. ~~Throughout these negotiations we must ensure that the final text of the United Nations Convention does not dilute international standards already established in this area by creating a new set of anti-money laundering provisions.~~

Option 1 of the current draft Article 4bis mentions specifically some, but not all, of the forty Recommendations. Option 2 calls for States Parties to "adopt and adhere to the international standards set by the Financial Action Task Force" (see paragraph 2) and annexes the text of the forty Recommendations to the Convention. For the reasons set forth above, the members of the FATF strongly support Option 2 of Article 4bis, as that text would enhance and expand on, rather than diminish, the progress made to date in extending the current international standards to governments world-wide.

I would greatly appreciate it if you would inform the members of the OAS/CICAD of the importance of this matter and encourage them to support Option 2 of Article 4bis. ~~The FATF would be pleased to learn of the reactions of your member governments~~, and of any issues or concerns regarding the text of Option 2 that should be addressed by anti-money laundering groups in a co-ordinated way.

The FATF Secretariat is at your disposal to receive feedback from you and your members as well as any further comments regarding this issue. The FATF will be discussing this issue again at its next plenary meeting, which will be held 21-23 September 1999 in Porto (Portugal). It would be very helpful to receive any responses in advance of that meeting. If there is anything the FATF could do to assist, please contact Mr. Patrick Moulette, Executive Secretary, or me directly. Together I am certain that we can achieve our goals in this important fight against money laundering. Thank you very much for your consideration of this matter.

Yours sincerely,



Gil Galvão

¹ See United Nations General Assembly Resolution S-20/4 of 10 June 1998 on countering money laundering.

- (a) Where the offender ought to have assumed that the property was the proceeds of crime;
- (b) Where the offender acted for the purpose of making a profit; or
- (c) Where the offender acted for the purpose of promoting the perpetration of further criminal activity.⁵⁵

[Subparagraphs of old paragraph 4 moved or deleted]⁵⁶

[Old paragraph 5 moved to article 4 bis.]

4. Nothing contained in this article shall affect the principle that the description of the offences to which it refers and of legal defences thereto is reserved to the domestic law of a State Party and that such offences shall be prosecuted and punished in conformity with that law.

Article 4 bis
Measures to combat money-laundering

Option 1

1. Each State Party shall institute a domestic regulatory regime for financial institutions⁵⁷ doing business within its jurisdiction to deter and detect money-laundering. Such regimes shall include the following minimum requirements:

- (a) The licensing and periodic examination of such institutions;
- (b) The lifting of bank secrecy in cases involving measures for the prevention and investigation of the crime of money-laundering, in accordance with the precepts laid down in the domestic legislation of each State Party;
- (c) The making and retaining by such institutions of clear and complete records of accounts and transactions at, by or through the institution for at least five years and ensuring that those records are available to appropriate authorities for use in criminal investigations, prosecutions and regulatory or administrative investigations and proceedings;

⁵⁵ Some delegations suggested that this paragraph required considerable clarification. Other delegations suggested that the phrase "ought to have assumed that the property was the proceeds of crime" could be replaced, for example, with the words "should have assumed that the property was the proceeds of crime" or "acted in violation of his or her duty to act", or that the paragraph could state only as follows: "Each State Party may adopt such measures as it considers necessary to establish also as offences under its domestic law all or some of the acts referred to in paragraph 1 of this article, when committed through negligence." It was also suggested that the concept of negligence should be defined in this connection. Some delegations noted that the words "acted for the purpose of making a profit" and "acted for the purpose of promoting the perpetration of further criminal activity" referred to aggravating factors that were not at all connected with the concept of negligence otherwise covered by this paragraph and suggested that they be placed in a separate paragraph.

⁵⁶ Old subparagraph 4 (a) was covered by paragraph 7 of article 7. Some delegations objected to old subparagraph 4 (b) on the grounds that it was in conflict with fundamental principles of justice, including the rights of bona fide third parties. Old subparagraph 4 (c) also raised problems vis-à-vis the rights of bona fide third parties. Old subparagraph 4 (d), on the level of punishment, was deleted on the grounds that it only referred to one sentencing option, fines, and that other factors also should be considered in sentencing.

⁵⁷ The term "financial institutions" includes, at a minimum, banks, other depository institutions and appropriate non-bank providers of financial services (such as securities dealers or brokers, commodity or futures dealers or brokers, currency dealers or exchangers, fund transmitters and casinos).

(d) Ensuring the availability to law enforcement, regulatory and administrative authorities of information held by such institutions on the identity of clients and beneficial owners of accounts; to this end, States Parties shall prohibit financial institutions from offering accounts identified only by number, anonymous accounts or accounts in false names; and

(e) Requiring such institutions to report suspicious or unusual transactions.

[1 *bis*. States Parties shall adopt appropriate measures to apply instruments with regard to money-laundering to banking and non-banking financial institutions, and financial markets, including stock exchanges, *bureaux de change*, etc.]⁵⁸

2. States Parties shall examine their domestic regimes relating to the establishment of business organizations and shall consider whether additional measures are required to prevent the use of such entities to facilitate money-laundering activities.

3. States Parties shall consider implementing feasible measures to detect and monitor the movement of cash and appropriate negotiable instruments across their borders, subject to safeguards to ensure proper use of information and without impeding in any way the freedom of legitimate capital movements. The measures may include a requirement that individuals and businesses report cross-border transfers of substantial quantities of cash and appropriate negotiable instruments.

4. States Parties shall enhance their ability to exchange information collected pursuant to this article. This shall, where possible, include measures to enhance domestic and international exchange of information between law enforcement and regulatory authorities. To this end, States Parties shall consider the establishment of financial intelligence units to serve as national centres for the collection, analysis and dissemination of information regarding potential money-laundering and other financial crimes.

5. In establishing regimes to combat money-laundering, States Parties should consider, in particular, the forty recommendations of the Financial Action Task Force on Money Laundering, as well as other relevant initiatives against money-laundering endorsed by the Organization of American States, the European Union, the Council of Europe and the Caribbean Financial Action Task Force.

6. States Parties shall endeavour to develop and promote global, regional, subregional and bilateral cooperation among judicial, law enforcement and financial regulatory authorities in order to combat money-laundering.

Option 2⁵⁹

1. Each State Party shall:

(a) Institute a comprehensive domestic regulatory and supervisory regime for banks and non-bank financial institutions, and other bodies particularly susceptible to money-laundering, within its competence, in order to deter and detect all forms of

⁵⁸ Paragraph 1 *bis* was submitted by the delegation of India as a reformulation of both options of old paragraph 5 of article 4.

⁵⁹ Option 2 is a proposal submitted by the United Kingdom of Great Britain and Northern Ireland at the third session of the Ad Hoc Committee (A/AC.254/5/Add.6). The proposal was preliminarily discussed at the third session and received widespread support as the basis for further work on this article.

money-laundering, which regime shall emphasize requirements for customer identification, record-keeping and the reporting of suspicious transactions;

(b) Without prejudice to articles [14 and 19] of this Convention, ensure that administrative, regulatory, law enforcement and other authorities dedicated to combating money-laundering (including, where appropriate under domestic law, judicial authorities) have the ability to cooperate and exchange information at the national and international levels [within the conditions prescribed by its domestic legislation⁶⁰].

2. For the purposes of implementing and applying the provisions of this article [4 and 4 *bis*], States Parties shall adopt and adhere to the international standards set by the Financial Action Task Force on Money Laundering established by the Heads of State or Government of the seven major industrialized countries and the President of the European Commission as set out for reference in annex ... to this Convention and as endorsed by the General Assembly in its resolution S-20/4 of 10 June 1998 on countering money-laundering.⁶¹

[3. With respect to the monitoring of implementation by States Parties of the obligations set forth in this article [4 and 4 *bis*], and without prejudice to the application of article [23] to other provisions of this Convention, a State Party shall be deemed to be in compliance with article [23] if that State Party is subject to and participates in a regular process of peer review conducted by the Financial Action Task Force or other comparable regional body that assesses implementation of regimes against money-laundering as set forth in this article.]⁶²

Article 4 ter
*Measures against corruption*⁶³

States Parties obligate themselves to take the following measures to effectively combat corruption and bribery [involving an organized criminal group]:

[An act of corruption in the public sphere committed within the framework of organized crime in order to facilitate such criminal activities shall be considered an aggravating factor.]

⁶⁰ The delegation of the United Kingdom noted that this phrase might accommodate the concerns of delegations that might have a preference for references to domestic legislation in this subparagraph (as in articles 14 and 19), but the delegation itself would not wish to see these included in the final version of the article.

⁶¹ Some delegations expressed concern about the appropriateness of incorporating in a global instrument standards set by a group of States with limited membership. Furthermore, discussion revolved around the inherently optional nature of these recommendations and whether it was compatible with the obligatory language of this paragraph. While it was recognized that the international community should seek to set high standards for measures to combat money-laundering, or at least benefit from already existing standards that had received broad recognition, the matter required further discussion.

⁶² Depending upon the outcome of negotiations on article 23, this paragraph may require modification. Some delegations expressed serious concerns about the implications and feasibility of this paragraph.

⁶³ This article, which was not subject to discussion at the first session of the Ad Hoc Committee, is a combination of two proposals submitted independently of one another: a proposal submitted by the United States (A/AC.254/L.11) (the title, the first two lines and the reference in brackets at the end to the future insertion of measures) and a proposal submitted by Uruguay (the two full paragraphs in brackets).